
COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 03-128

Petition for Exemption of Electric Substation
Additions from Zoning Ordinance
of Salem, Massachusetts
Pursuant to Mass. Gen. L. c. 40A § 3.

INITIAL BRIEF OF NEW ENGLAND POWER COMPANY

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I. INTRODUCTION

On December 1, 2003, pursuant to G.L. c. 40A § 3, New England Power Company (“NEP” or “Company”) petitioned the Department of Telecommunications and Energy (“Department”) for an exemption from the operation of the City of Salem Zoning Ordinance (“Zoning Ordinance”). NEP currently maintains and operates a switchyard on land it holds in perpetual easement at the Salem Harbor Station. In fact, NEP has maintained and operated the switchyard since the 1950s. (DTE RR-2) NEP’s petition seeks to exempt the construction and use of additional 115 kV switchyard facilities in said City of Salem on land held in easement by NEP at Salem Harbor Station. (Exh. NEP -1 at ¶ 1)

The purpose of the additional 115 kV switchyard facilities is to provide improved voltage support to NEP’s customers in the North Shore region. (Exh. NEP -1 at ¶ 3 NEP-JWM at 6, Lines 1 - 6) The North Shore region includes communities such as Salisbury, Amesbury, Merrimack, Haverhill, Methuen, Andover, North Andover, Newburyport, West Newbury, Newbury, Groveland, Georgetown, Rowley, Ipswich, Boxford, Topsfield, Hamilton, Essex, Gloucester, Manchester-by-the-Sea, Beverly, Middleton,

Danvers, Peabody, Salem and parts of Lawrence, Tewksbury, North Reading, Swampscott, Lynn and Wakefield. (Tr. 138, Lines 4-9)

More specifically, NEP proposes to add two 115 kV, 63 MVar capacitor banks located approximately 200 feet northwest of a proposed new bay at the 115 kV switchyard at Salem Harbor Station (the “Project”). (Exh. NEP-RLF-R at 2, Line 34 through 3, Line 45) The new bay (the fifth bay in the switchyard) and the new capacitor banks would be connected via underground 115 kV cables. (Id.) In the new bay, the Company proposes to install 115 kV, 3000 amp circuit breakers and switches and 115kV instrument transformers. (Id.)

The Company proposes to install the capacitor banks within the boundary of an existing substation easement on land presently used by USGenNE as a parking lot. (Id.) NEP proposes to install equipment needed to protect, control, and monitor the capacitor banks in the switchyard control house. (Id.) The proposed new fifth bay would require a switchyard fence expansion. (Id.)

The Company is requesting, pursuant Mass. Gen. Laws ch. 40A, § 3, to be exempted from operation of the Zoning Ordinances in connection with the construction and use of the Project, to the extent the Ordinances may be applicable. (Exh. NEP-1 at ¶ 1; Tr. 350, Line 13 through 352, Line 6.)

II. ARGUMENT

A. New England Power Company Is A Public Service Corporation.

To satisfy the requirements of Mass. Gen. L. c. 40A, § 3, NEP must first demonstrate that it is a public service corporation. Among the pertinent considerations in determining public service corporation status are (i) whether the corporation operates

pursuant to an appropriate franchise, (ii) whether the corporation is subject to the requisite degree of governmental control and regulation, and (iii) the nature of the public benefit to be derived from the service provided. See, *Save the Bay, Inc. v. Department of Public Utilities*, 366 Mass 667, 680 (1975). The Department has found on numerous occasions that NEP is a Massachusetts corporation authorized to transmit electricity, an electric company as described in Chapter 164 of the General Laws, and a public service corporation. See, e.g., *New England Power Company*, D.P.U. 92-255, at 2 (1994); *New England Power Company*, EFSB 97-3 at 76 (1998). Accordingly, NEP meets this statutory criteria for a zoning exemption.

B. A Comprehensive Exemption From The Zoning Ordinance Of The City Of Salem Is Necessary.

The Department will allow comprehensive zoning relief under Mass. Gen. Laws ch. 40A, § 3 “where numerous individual exemptions are required or where the issuance of a comprehensive exemption could avoid substantial public harm by serving to prevent delay in the construction and operation of the proposed use.” *Commonwealth Electric Company*, D.T.E. 03-7, at 33, (2003)(“*ComElec*”); see also *Tennessee Gas Pipeline Company*, D.T.E. 01-57, at 11 (2002)(“*Tennessee Gas*”); *Massachusetts Electric Company*, D.T.E. 01-77, at 30-31 (2002)(“*MassElectric*”). A comprehensive zoning exemption is appropriate where, in the case of numerous required exemptions, the proposed construction is time-sensitive or of critical importance to the petitioner’s serving its customers in a satisfactory manner pending the completion of the proposed project. See, *Tennessee Gas* at 11. Finally, the Department will allow comprehensive exemptions warranted by the public convenience and necessity, and where it is critical to the public interest that construction of the proposed project begins without needless

delay. See, *Tennessee Gas* at 12; *MassElectric* at 31; *ComElec* at 34. In the instant case, comprehensive zoning relief is necessary for the reasons discussed below.

1. Numerous Exemptions Are Required For This Project.

The Company's proposed project merits comprehensive zoning relief because, in order to construct the project to satisfy the voltage support needs of the Company's customers, numerous individual exemptions under the Zoning Ordinance will be required. (Exh. NEP-1 at 11 as amended; Tr. 350-352) As the record shows, NEP has proved that in order to build the Project so that it can provide improved voltage support to its NEP's customers in the North Shore region, NEP will need, at minimum, exemptions from all of the following provisions of the Zoning Ordinance:

- Article V, §5-3(h) which requires a special permit for industrial operations;
- Article V, §5.3(j) relating to nonconforming lots, structures, land and uses;
- Article VIII, relating to nonconforming lots, structures, land and uses;
- Section 9-4 relating to special permits;
- Article VI, §6-4 relating to dimensional, set back and height requirements;
- Article VII, §7-18 pertaining to Site Plan Review. (Id.)

(a) The Project Will Require An Exemption From The Special Permit Requirements Of The Zoning Ordinance.

The Zoning Ordinance, Article V, §5-3(h), describes “[i]ndustrial and manufacturing operations” as “special permit uses, or prohibited uses as indicated, in the industrial districts”. (Exh. NEP-1, Att. B at 20) The Zoning Ordinance does not specifically define the term “industrial” but, as provided for in the Zoning Ordinance,

terms not defined should be accorded their *Merriam-Webster Unabridged Dictionary* definition (Exh. NEP-1, Att. B at 4) The multiple entries for and history of the word “industrial” in the *Merriam-Webster Unabridged Dictionary* can reasonably be construed to encompass a switchyard such as the one currently in place at the site and as proposed for expansion. Therefore, absent an exemption, NEP would need to apply for and obtain a special permit, pursuant to the Zoning Ordinance, to construct the Project. (Tr. 350, Line 17 – 351, Line 2)

The switchyard is a grandfathered nonconforming use because it was constructed during the 1950s prior to the enactment in 1965 of the Zoning Ordinance. (DTE RR 2) According to Article V, §5.3(j), Article VIII and Section 9.4 of the Zoning Ordinance, the alteration, construction, change, enlargement, extension, or expansion of existing nonconforming structures and uses without a special permit is prohibited. (Exh. NEP-1, Att. B at 21) The Project will result in the alteration, reconstruction, change, enlargement, extension, and/or expansion of both the nonconforming structures and the nonconforming use of land at Salem Harbor. (DTE RR 2) Therefore, absent an exemption from each of the aforementioned provisions, NEP would need to apply for and obtain a special permit, pursuant to the Zoning Ordinance, to construct the Project. (Tr. 351, Line 3 - 8)

The plan for the Project calls for construction to begin during March of 2005. (Tr. 200, Line 8 - 9) The process of obtaining a special permit can take as long as 189 days, a process subject to uncertainty and potential delay. (Exh. NEP-1 at ¶13; DTE RR-3 as Amended) Special permits are generally subject to appeal before the Land Court, Superior Court, Housing Court or District Court. (Id.) Because of such potential time delays, an appeal would virtually assure that NEP could not construct the Project

according to schedule. Exemptions from the several sections of the Zoning Ordinance that would require NEP to obtain a special permit for the Project are therefore critical for timely completion of the Project in order to provide reliable service to NEP's North Shore customers.

(b) The Project Will Require An Exemption From The Height And Dimensional Limitations Of The Zoning Ordinance.

Article VI, §6-4, Table II of the Zoning Ordinance establishes certain dimensional limitations for structures within Industrial Districts. (Exh. NEP-1, Att. B at 24; Tr. 351, Lines 17 - 20) Several components of the proposed Project exceed these limitations. (Exh. NEP-1, Att. B at 24; DTE 1-1; NEP-RLF-5) For example, the side yard fence of NEP's proposed Project will not meet setback requirements. (DTE 1-1) The fence will be a maximum of 24 feet from the property line, six feet short of the 30 feet required under the Zoning Ordinance. (Id.) Several parts of the box-frame structure for the proposed new bay will exceed forty-five feet, (NEP-RLF-5), the maximum building height allowed within an Industrial District. (Exh. NEP-1, Att. B at 24)

Absent an exemption, NEP would need to request a variance, pursuant to the Zoning Ordinance, for every proposed structure that exceeds the aforementioned height or dimensional limitations. (Exh. NEP-1 at ¶11; Tr. 351, Lines 17 - 20) Obtaining a variance is a lengthy and complicated process that could delay construction of the Project beyond the scheduled commencement date of March 2005. (DTE RR-3 as Amended) The process for obtaining a variance from the Board of Appeals can take up to 114 days from the submittal of the petition for a variance; including appeal periods the process,

could take almost seven months. (Id.) Since a variance can be appealed in Land Court, Superior Court, Housing Court or District Court the Project would be subject to the uncertainty and delays of the court system, which could result in further delays. (Id.) As with the special permit, an appeal of the variance would virtually assure that NEP could not construct the Project according to schedule.

(c) The Project Will Require An Exemption From The Site Plan Review Provisions Of The Zoning Ordinance.

Article VII, §7-18 of the Zoning Ordinance pertaining to Site Plan Review states, “no structure or premises exceeding ten thousand (10,000) square feet in nonresidential gross building area or containing six (6) or more residential dwelling units shall be constructed, reconstructed, enlarged, altered, or used, except in accordance with a site plan submitted to and approved by the planning board in accordance with the request of this section.” (Exh NEP-1, Att. B at 45) The fence line that will encompass the Project will enclose about 28,200 square feet, (NEP-FPR at 4, Lines 26-27), and so absent an exemption the Company would have to submit the Project for Site Plan Review. (Tr. 351, Line 21 – 352 Line 6)

The plan for the Project calls for construction to begin during March of 2005. (Tr. 200, Line 8 -9) The process of Site Plan Review can be lengthy. Under the current construction of state law, an appeal of a Site Plan Review approval that is not tied to a special permit approval under a local zoning code can only be lodged once an associated building permit is issued. (SALEM 1-55 as Amended) First, NEP is not seeking special permit approval for the subject Project. Instead, it seeks the Department’s exemption from that requirement. Second and very significantly, the Project which is the subject of

this proceeding does not require a building permit. (Id.) Accordingly, the Company was faced with the possibility of no reasonable recourse in the event that it or an aggrieved party wished to appeal a Site Plan Review approval or denial. (Id.) Lodging an appeal would first require the airing of due process and procedural issues prior to a hearing on the merits of the decision. (Id.) On the other hand, the procedure available under Mass. Gen. Laws ch. 40A § 3 would allow an appeal of a Department Order to go directly to the Supreme Judicial Court. (Id.) On balance, all the factors described here, plus the Company's obligation to provide reliable service to customers and the City's expressed attitude toward the proposed Project, weigh in favor of exercising the Company's statutory rights to seek a zoning exemption at the state level. (Id.)

C. The Proposed Project Is Reasonably Necessary For The Convenience And Welfare Of The Public.

In determining whether a proposed use is reasonably necessary for the convenience and welfare of the public, the Department "must balance the interests of the general public against the local interest." *Dispatch Communications of New England d/b/a Nextel Communications, Inc.*, D.P.U./D.T.E. 95-59-B/95-80/95-112/96-113 at 7 (1998) ("*Nextel*"); *Town of Truro v. Dep't of Public Utilities*, 365 Mass. 407 (1974). The Department undertakes a "broad and balanced consideration of all aspects of the general public interest...", *New York Central Railroad v. Dep't of Public Utilities*, 347 Mass. 586, 592 (1964), examining the effects of the requested exemption "in the state as a whole and upon the territory served by the applicant." *Save the Bay*, 366 Mass. At 685; *New York Central Railroad*, 347 Mass. at 592. In particular, the Department examines:

(1) the present or proposed use and any alternatives or alternative sites identified, (2) the need for, or public benefits of, the present or proposed use, and (3) the environmental impacts or any other impacts of the present or proposed use. *Nextel* at 8. Finally, the Department endeavors to assure that the intent of G.L. ch. 40A § 3 will be realized, i.e., that a present or proposed use of land or structure that is determined by the Department to be “reasonably necessary for the convenience or welfare of the public not be foreclosed due to local opposition.” See, *Berkshire Power Development, Inc.*, D.P.U. 96-104 at 30 (1997).

1. The Project Is Needed To Provide Voltage Support To The North Shore Region And Therefore The Public Will Benefit From Its Implementation And Use.

Through electrical system studies of the North Shore region, NEP has determined that the Project is needed to assure the supply of voltage within a reasonable range for foreseeable contingencies through the year 2012. (NEP-JWM at 4, Lines 14 - 16) The North Shore region includes Salisbury, Amesbury, Merrimack, Haverhill, Methuen, Andover, North Andover, Newburyport, West Newbury, Newbury, Groveland, Georgetown, Rowley, Ipswich, Boxford, Topsfield, Hamilton, Essex, Gloucester, Manchester-by-the-Sea, Beverly, Middleton, Danvers, Peabody, Salem and parts of Lawrence, Tewksbury, North Reading, Swampscott, Lynn and Wakefield. (Tr. 138, Lines 4 - 9) The Project will benefit the public by providing the needed reactive support and thereby assuring voltage within a reasonable range.

Voltage must be consistent to avoid transmission system failures and damage to customer equipment. The Company’s Transmission Planning Guide, NEPOOL and REMVEC establish certain criteria regulating the voltage supplied to NEP customers so

that customers' equipment will not be damaged. (NEP-JWM at 3, Line 30 – 4, Line 4; Tr. 12 – 18; Tr. 136, Lines 13 - 22) The established normal operating range for voltages of 115 kV and below is no less than 0.90 p.u., (DTE 1-7; Tr. 12, Line 21), the analogous NEPOOL criterion is contained within NEPOOL OP-12. (Tr. 16, Line 4 -18, Line 22; USGenNE 1-10) In order to hold a scheduled voltage of 119kV at the switchyard and meet voltage criteria throughout the North Shore region with all lines in during heavy load periods, approximately 135 MVar of reactive support at Salem Harbor is required. (DTE 1-5; DTE 1-6; DTE 1-8; DTE 1-10-S; Tr. 11 - 19) If voltage were to dip below the aforementioned criterion, motors could stall and burn out, brownouts which cause lights to dim or televisions to fail might occur, and failure of electronic equipment such as computers could result. (Tr. 136, Lines 13 - 22)

To determine whether the North Shore area transmission system will meet reliability criteria affecting voltage levels, the Company conducted electrical system studies for the area for the period through the year 2012. (NEP-JWM at 4 Lines 14 - 16) These studies involved computer simulations of power flow. (Id.) Because USGenNE had independently filed an application for retirement of the Salem Harbor Station, the Company made sure to simulate system performance both with and without the presence of Salem Harbor generation. (Id.) The Company simulated various contingency conditions and monitored the flow and voltage levels on the transmission lines and substation buses, checking that the flows and voltage levels on all facilities remained within their capabilities. (Id.) In cases where the simulations indicated that loading or voltage on a facility exceeded its capabilities, NEP evaluated changes to the facility or the system to keep the facility within capabilities. (Id.) The studies of the North Shore

area revealed system voltages would be less than the stated criteria without the Project. (NEP-JWM at 4, Line 31 – 5, Lines 1 -21) NEP’s obligations to its customers require that it take measures to resolve this matter in a timely and prudent manner. The proposed Project is the most efficient and economic means of doing so. (DTE 1-9)

2. The Preferred Site Is Reasonably Suited For The Project.

The present use of the site as a switchyard has endured for approximately fifty years and during that time has served the public’s need for electricity in a suitable and appropriate manner. (DTE RR – 2) The long tenure of the site being used to meet those needs has resulted in the establishment of infrastructure which is particularly disposed toward the continuing the present use.

NEP initially considered two alternatives to the proposed Project. (NEP-JWM at 6, Line 8 - 14) The first alternative considered the addition of six 45 MVar 115 kV capacitor banks at the Salem Harbor; the second was the addition of four 45 MVar 115 kV capacitor banks at the Switchyard and two 45 MVar 115 kV capacitor banks at NEP’s Golden Hills substation. (NEP-JWM at 6, Line 16 - 23) The confluence of transmission lines that exist at Salem Harbor make it a most suitable location to provide voltage support to the North Shore region. (SALEM 1-8)

The costs associated with the studied alternatives are more than twice the cost of the proposed project. Both alternatives to the proposed Project, originally explored by the Company required six (6) capacitor banks with an estimated cost of \$4 million per alternative while the proposed Project achieved the objective of maintaining voltage support by means of two capacitor banks with an estimated cost of \$1.8 million. (DTE 1-

9) The King Street alternative explored by the Company at the behest of USGen would cost as much as \$5.8 million, but would fail to provide adequate voltage support at Salem Harbor. (USGen RR-2 as Amended) Thus, the proposed Project is considerably less expensive than the alternatives studied.

Multiple land issues surrounding the alternatives also militate in favor of the proposed Project. Placing a capacitor installation at King Street, for example, would be impractical due to lack of available space for capacitors at or near the site. (USGen RR-2 as Amended) The Company does not own sufficient land in the area for such an installation; therefore, a property purchase - if any in the area were even available – would be required. (Id.) Assuming, *arguendo*, that property could be purchased near King Street, other issues such as additional permitting problems given the wetlands and buffer zones surrounding the site, commencement of new zoning proceedings and cost-benefit analysis that forecasts a relatively diminished voltage support improvement for the North Shore region stand in favor of the proposed Project. (Id.)

The installation of two (2) banks versus six (6) results in a simpler, more reliable transmission system. (Id.) The amount of space required to install six (6) banks would be considerably more than that required for the proposed Project. NEP's proposal therefore will make a more efficient use of land. (Id.) Given the combination of accessibility to multiple transmission lines, the established switchyard environment, the resulting system performance and the relatively low cost associated with the proposed Project, it is by far the most suitable choice for NEP's customers and the region at large. (NEP-JWM at 6, Lines 25 - 29)

3. The Impacts Of The Proposed Use To The Local Community Will Be Minimal.

The site of the proposed Project, within the existing Salem Harbor Switchyard, is located in an Industrial zoning district, (DTE 1-1), as defined by the Zoning Ordinances of the City of Salem. (NEP-1, Att.B) The neighborhood is also home to Salem Harbor Generating Station, a tank farm and a wastewater treatment facility. (NEP-FPR at 3 Lines 3 - 4) These surrounding facilities are conducive to the proposed Project. Based upon NEP's experience with other small construction projects of this type and scale, impacts to the local community will be minimal. (SALEM 1-25)

(a) Land Use

The Project will have minimal impact on land use. Salem Harbor and Collins Cove surround the peninsula on which the Switchyard, Salem Harbor Generating Station, a tank farm, a wastewater treatment facility and a residential neighborhood (northwesterly) are located. (NEP-FPR at 3, Lines 1 - 4) The footprint of the proposed Project will be on land currently serving as part of a parking lot for Salem Harbor Generating Station. (Id.) The nearest residences to the Project area are along Fort Avenue, which is opposite the main entrance to the plant and about 250 feet from the fence of the capacitor bank. (DTE 1-13) The equipment associated with the Project is consistent with the existing switchyard equipment. (NEP-FPR at 4, Lines 18 - 20) No state-listed species or habitats are known to occur on or adjacent to the Project area. (DTE 1-14) Based on the foregoing facts, the Project will have minimal impact on land use.

(b) Wetlands / Water Resources

The Project will have no impact on wetlands and water resources because there are no wetlands or wetland resource areas at or near the site. (NEP-FPR at 4, Lines 22 - 23) The nearest coastal feature and associated flood plain is Salem Harbor which is several hundred feet away and will not be affected by the Project. (Id.) There are no other surface water bodies near the Switchyard. (Id.) As with any construction project, there will be some limited runoff if it rains when the asphalt is removed and soils are exposed during construction, but this discharge will be controlled using erosion control wood chip bales if necessary to impede runoff. (NEP-FPR at 4, Lines 25 - 28) If dewatering is required when foundations are dug, the discharge will be routed to a lined hay bale corral or to a wetlands filter bag in order to prevent sediment migration off site. (Id. at 28-30) Based on the foregoing facts, the Project will no impact on water resources.

(c) Visual Resources

The Project will have minimal impact on visual resources. Salem Harbor Generating Station, the tank farm and wastewater treatment facility will continue to dominate views of the site. (NEP-FPR at 3, Lines 15 - 16) A wooden stockade fence, a row of arbor vitae, other ornamental shrubs and deciduous trees about thirty (30) feet tall block the view of the proposed Project from the residential neighborhood. (Id.; DTE 1-15; DTE 1-15 Att. A) The new equipment associated with the proposed project is in keeping with the general equipment profile and height already in place. (NEP-FPR at 5, Lines 2 - 5) Significantly, USGenNE's project, which recently received a zoning exemption, includes nine structures taller than the effective height limitation of 45 feet.

(DTE 03-83 at 16;Tr.375, Lines 10 - 11) Based upon the foregoing facts, the Project will have minimal impact on visual resources.

(d) Noise Environment

The Project will have minimal impact on the existing noise environment. The site of the proposed Project currently has ambient background noise associated with the commercial, industrial, and residential activities in the area. (NEP-FPR at 3, Lines 22-24) Vehicular noise and power station noise dominate. (Id.) Additional noise will be short term and only occur during the construction phase of the Project. (NEP-FPR at 5, Lines 7 – 8) The combination of existing site noise associated with Salem Harbor Generating Station, vehicular traffic on Fort Avenue, and existing sound barriers make it likely construction noise associated with the Project will be subsumed into the existing noise environment. (DTE 1-22) The Environmental Impact Statement completed for USGen New England's Project at Salem Harbor Generating Station supports this conclusion. (SALEM 1-30) That EIS concluded it would take pile driving to exceed existing ambient daytime noise levels at the plant. (Id.) NEP's Project will not require pile driving or any other activity that produces such noise. (SALEM 1-39; SALEM 1-40) Furthermore, there are no moving parts associated with the Project that will cause operational noise once construction is complete. (Tr. 237, Lines 10 – 15) Based upon the foregoing facts, the Project will have minimal impact on the existing noise environment.

(e) Traffic and Access

The Project will have minimal impact on local traffic and access. The Project will not generate significant vehicular traffic or change access to the site. (NEP-FPR at 5, Lines 16 - 17) The main roads to the site are Derby Street and Fort Avenue and the other major roads in the area are Bridge Street, Route 114 and Essex Street. (NEP-FPR at 5, Lines 17 - 18) The access route for construction vehicles and workers is planned to be along Webb Street from Route 1A to Fort Avenue. (DTE 1-17) Normal workdays will be Monday through Friday, 8 am to 5 pm. (DTE 1-25) On average about 8 people will be onsite in association with Project construction. (NEP-FPR at Q7 P5) All equipment and materials will be delivered to the site using standard delivery trucks, similar to those that currently enter the plant site each day or supply the local supermarket or are used to construct and deliver materials to a typical single family home such as are constructed throughout the City. (SALEM 1-33) Deliveries will be spread throughout six months of construction and the frequency of deliveries will not affect local roads. (Id.) In fact, Project related deliveries could reasonably be expected to be indiscernible from the normal daily truck traffic generated by the plant's current operation. (Id.) NEP anticipates adequate parking for the Project will be available, as has been the case with other construction projects at the site. (DTE 1-18; Tr. 162, Lines 17 -19) Adequate loading or lay-down facilities for the entirety of construction will be within the existing confines of Salem Harbor Generating Station. (DTE 1-18; Tr. 159, Line 9 -161, Line 24) As is presently the case, after completion of construction, the Switchyard will be unmanned and maintenance crews will visit the site with the same frequency as they do

now, approximately once a month. (SALEM 1-34; SALEM 1-41) Based upon the foregoing facts, the Project will have minimal impact on traffic and access.

(f) Commitments NEP Has Made To Minimize Impact

During the evidentiary hearing in this proceeding, NEP was asked to consider the mitigation measures USGen New England had agreed to implement for its Project. (Tr. 238, Lines 8 -16; Tr. 242, Lines 1 - 6) In its responses to the resulting Record Requests, NEP committed to numerous measures aimed at minimizing impact to the local neighborhood. (USGenNE RR-4; USGenNE RR-5)

- NEP has committed to spreading crushed stone as soon as feasible in the construction process to minimize the fugitive particulate emissions that may result from its small project. (Id.)
- NEP has committed, in the event that dewatering is necessary, to constructing a discharge sump in the pervious substation yard area to filter out sediment and recharge the water back into the soil. (Id.)
- NEP has committed to testing and properly disposing of all soil leaving the site. (Id.)
- NEP has committed to complying with the City of Salem's Noise Control ordinance and maintaining functional mufflers on construction equipment. (Id.)
- NEP has committed to designing lighting in the switchyard facility to have minimal impact on the surrounding community. (Id.)

- NEP has committed to discuss construction traffic management with the Salem Police Department. (Id.; Tr. 311, Line 21 through 312, Line 2)¹
- NEP has committed to use routes already frequented by trucks and cars traveling to and from the facility in order to minimize impacts from construction traffic. (USGenNE RR-5)
- NEP has committed to work during between 8 AM and 5 PM with workers arriving only one-half hour earlier. (Id.)
- NEP has committed to keep its operations from depositing dirt on City streets by proper housekeeping of its project site and to cleaning City streets if NEP construction trucks track material on to them. (Id.)
- NEP has committed to storing construction materials with the Facility property line/fence. (Id.)
- NEP has committed to avoid off site queuing of trucks. (Id.)
- NEP has committed to establishing a phone number for construction related issues/concerns. (Id.)

NEP's small Project will have minimal impact on the local community but will provide a large benefit to the general public. The foregoing facts demonstrate that the proposed use of the site is similar to the present use. Additionally, given the commitments made by NEP to implement, as described above, the applicable mitigation measures the City of Salem imposed on USGenNE relative to its much larger project, the

¹ Following the evidentiary hearings in this docket, NEP project personnel arranged a meeting (to be held without Company counsel present) to discuss this matter with the Police Department on July 22, 2004. However, the Mayor's Office forced the Police Department to cancel the meeting at the last minute. The City Solicitor has furthermore forbade any discussions between NEP and the City on this or other Project issues unless scheduled through his office.

Department can rest assured that the interests of the local community will be appropriately addressed.

III. CONCLUSION

NEP has demonstrated that it is a public service corporation, that it requires a comprehensive exemption from the Zoning Ordinance of the City of Salem to construct and operate the Project, and that the Project is necessary for the convenience and welfare of the public. The Project serves an important public purpose of assuring voltage support for the North Shore region, thereby increasing reliability of the transmission system for the benefit of customers including Massachusetts Electric Company customers residing in the City of Salem. The benefits of the Project for the public vastly outweigh the minimal impacts that may accompany construction. The Department should therefore grant the requested comprehensive zoning exemption under Mass. Gen Laws ch. 40A § 3.

Respectfully submitted,

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